

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-343-C - ORDER NO. 2005-127  
MARCH 21, 2005

IN RE: Application of American Broadband, Inc. for	)	ORDER GRANTING
a Certificate of Public Convenience and	)	CERTIFICATE TO
Necessity to Provide Interexchange and	)	PROVIDE
Interexchange Private Line Services and	)	INTEREXCHANGE AND
Access Services as a Competitive Access	)	INTEREXCHANGE
Provider within the State of South Carolina	)	PRIVATE LINE
and for Flexible Regulation and Modified	)	SERVICES AND ACCESS
Alternative Regulation.	)	SERVICES AS A
	)	COMPETITIVE ACCESS
	)	PROVIDER AND
	)	FLEXIBLE AND
	)	MODIFIED
	)	ALTERNATIVE
	)	REGULATION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of American Broadband, Inc. (“American Broadband” or the “Applicant” or the “Company”) for authority to provide Interexchange and Interexchange Private Line Services and Access Services as a Competitive Access Provider (CAP) within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its intrastate interexchange business service offerings in accordance with the principles and procedures established for alternative regulation by Order Nos. 95-1734 and 96-55 in

Docket No. 95-661-C, as modified. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2004) and the Rules and Regulations of the Commission.

By letter, the Commission's Docketing Department instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

Counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would not seek authority in rural local exchange ("LEC") service areas of South Carolina and that it would not provide local service to any customer located in a rural incumbent's service area, unless and until American Broadband provided written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. American Broadband also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. American Broadband agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met.

A hearing was commenced on March 9, 2005, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Randy Mitchell, Chairman, presided. American Broadband was represented by John J. Pringle, Jr., Esquire. A. Stephen John, President and CEO of American Broadband, appeared and testified on behalf of the Company. Ben Mustian, Esquire and Wendy B. Cartledge, Esquire, represented the Office of Regulatory Staff (ORS).

Mr. John presented testimony to demonstrate American Broadband's financial, managerial, and technical ability to provide the telecommunications services for which authority is sought in South Carolina. The witness also presented testimony regarding his background and experience in business and telecommunications as well as that of the other executives of the Company. According to Mr. John, American Broadband was established to partner with cable companies to use excess bandwidth for private line networks. In fact, the company intends to build private networks from cable resources, according to Mr. John. The Company does not intend to provide telephone services directly to residential and business customers. American Broadband intends to enter into long-term contracts with its customers.

The Company has requested waivers of certain Commission rules and regulations. Specifically, American Broadband has requested a waiver of 26 S.C. Code Regs. 103-631 which requires local telephone service providers to publish and distribute a local telephone directory. American Broadband further requests that it be permitted to maintain its books and records according to Generally Accepted Accounting Principles

(GAAP), and thus it be allowed to keep its books and records at its headquarters, and thus be allowed a waiver of 26 S.C. Code Regs. 103-610.

The testimony reveals the Company's Application to provide telecommunications services in other jurisdictions has never been denied, and the Company agrees to abide by and comply with the Commission's rules, regulations, and Orders.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. American Broadband is a provider of local exchange and interexchange telecommunications services and wishes to be issued a certificate by this Commission to provide its services in South Carolina.

2. Based on the testimony presented at the hearing in this matter, as well as the documents contained in the record concerning the financial stability of the Applicant, we find that American Broadband has the managerial, technical, and financial resources to provide the services as described in its Application.

3. We find that American Broadband's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2004).



4. We find based on the testimony and documents in the record in this case that American Broadband will support universally available telephone service at affordable rates.

5. We further find that based on testimony at the hearing in this matter and the documents in the record that American Broadband has the capability to provide services which will meet the service standards of the Commission.

6. The Commission finds that the provision of local exchange service by American Broadband will not “adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2004).

7. We find that the issuance of the authority requested by American Broadband is in the best interests of the citizens of the State of South Carolina.

### **CONCLUSIONS OF LAW**

1. The Commission concludes that American Broadband possesses the managerial, technical, and financial resources to provide the competitive local exchange telecommunications services and intrastate interexchange services as described in its Application.

2. The Commission concludes that American Broadband’s “provision of service will not adversely impact the availability of affordable local exchange service.”

3. The Commission concludes that American Broadband will participate in the support of universally available telephone service at affordable rates to the extent that American Broadband may be required to do so by the Commission.

4. The Commission concludes that American Broadband will provide services which will meet the service standards of the Commission.

5. The Commission concludes that approval of American Broadband's Application to provide local exchange telecommunications services and intrastate interexchange telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.

6. The Commission concludes that the provision of local exchange service by American Broadband will not otherwise adversely impact the public interest.

7. The Commission concludes that the issuance of the authority to provide local exchange telecommunications services and intrastate interexchange telecommunications services as requested by American Broadband, and as set forth in its Application, is in the best interests of the citizens of the State of South Carolina.

8. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to American Broadband to provide competitive intrastate local exchange telecommunications service and to provide intrastate interexchange service and interexchange private line services and access services as a competitive access provider.

9. The Commission concludes that American Broadband's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications

by Order No. 98-165 in Docket No. 97-467-C. The Commission has previously granted this “flexible regulation” to competitive local exchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires that the Commission allow this flexible regulation to those carriers which request it. Specifically under flexible regulation, the Commission adopts for competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, local exchange service tariff filings are presumed valid upon filing, subject to the Commission’s right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

10. The Commission concludes that American Broadband’s intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this “alternative regulation” to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that

granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

11. The Commission concludes that terms of the Stipulation between American Broadband and the SCTC are approved and adopted as a part of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to American Broadband to provide via resale competitive intrastate local exchange telecommunications services, including optional services from incumbent local exchange carriers. American Broadband’s local exchange service offerings shall be provided in

compliance with the Stipulation between American Broadband and the SCTC. Further, American Broadband is granted authority to provide via resale intrastate interLATA interexchange telecommunications services and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission. Further, the Company is granted authority as a provider of interexchange private line services and access services as a competitive access provider within the State of South Carolina.

2. The terms of the Stipulation between American Broadband and the SCTC are approved, and adopted as a part of this Order. Any proposal to provide competitive intrastate local exchange telecommunications service to rural service areas is subject to the terms of the Stipulation.

3. American Broadband shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with ORS Staff and comporting with South Carolina law in all matters. American Broadband's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for American Broadband's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously

approved by the Commission. Further, American Broadband's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

4. The Commission adopts a rate design for the long distance services of American Broadband which is consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under the Commission approved alternative regulation, the business service offerings of American Broadband, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff

filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to American Broadband also.

5. With regard to the interexchange residential service offerings of American Broadband, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

6. American Broadband shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. American Broadband shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking

proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2004).

7. If it has not already done so by the date of issuance of this Order, American Broadband shall file its revised interexchange long distance tariff within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

8. American Broadband is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

9. With regard to the Company's offering of interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

10. American Broadband shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If American Broadband changes underlying carriers, it shall notify the Commission in writing.

11. With regard to the origination and termination of toll calls within the same LATA, American Broadband shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996



(See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph four of the Stipulation and Appendix B approved by Order No. 93-462.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and the Office of Regulatory Staff in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. American Broadband shall file the names, addresses and telephone numbers of these representatives with the Commission and the Office of Regulatory Staff within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” form which can be located at the Commission’s website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp) to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

13. American Broadband shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

14. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is

more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs American Broadband to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing voice or dial-tone services within South Carolina, American Broadband shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

15. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

16. American Broadband shall file annual financial information with the Commission and the Office of Regulatory Staff in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, American Broadband shall keep financial records on an intrastate basis for South Carolina in order

to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp). The title of this form is "Annual Report for CLECs" and/or "Annual Report for Interexchange Companies." The Company shall file the annual report form with the Commission by April 1<sup>st</sup> of each year.

Commission gross receipts forms are due to be filed with the Commission and the Office of Regulatory Staff no later than August 31<sup>st</sup> of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp).

Additionally, pursuant to the Commission's regulations, the Company shall file a "CLEC Service Quality Quarterly Report" with the Commission and the Office of Regulatory Staff. The proper form for this report can be found at the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp). These "CLEC Service Quality Quarterly Reports" are required to be filed within 30 days of the end of each calendar quarter.

17. The Federal Communications Commission ("FCC") in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001.

All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2002, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to their assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated, and bill inserts promoting 711 were also required. This Company must comply with these mandates as applicable. Complete information on compliance with this FCC and Commission requirement may be found on the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp).

18. For good cause shown, American Broadband is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Principles rather than the Uniform System of Accounts method.

19. For good cause shown, American Broadband is granted a waiver of the requirements that the Company publish and distribute a directory under 26 S.C. Code Ann. Regs. 103-631. American Broadband is ordered to contact the incumbent ILECs to ensure that the Company's customers are included in the applicable directory.

20. For good cause shown, American Broadband is granted a waiver of 26 S.C. Ann. Regs. 103-610 that requires the keeping of the Company's books within South Carolina. The Company may keep its books at its headquarters.

21. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
G. O'Neal Hamilton, Vice-Chairman

(SEAL)